

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 22894 of 2006.

Between:

M/s Sriram Rice Tec Pvt. Ltd. represented by
its Director Smt K.Raja Rajeshwari.

...Petitioner

and

The Andhra Pradesh State Financial Corporation,
Hyderabad and another.

...Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 22894 of 2006.

Oral order:

The petitioner, a private limited company registered under the provisions of the Companies Act, 1956 having a rice mill plant at Bodduvari Palem, Kodavaluri, Nellore District has filed this writ petition.

The petitioner obtained a term loan from the 1st respondent and as a security hypothecated the machinery and plant, which was located in an extent of Ac.6-06 cents in Bodduvari Palem, Nellore District. Admittedly, the petitioner defaulted in payment of the instalments of the loan. In May, 2003 the petitioner applied for rescheduling of the term loan and sought grant of instalments for the said purpose.

Thereafter, by a notice dated 14-12-2005, exercising power under Section 29 of the State Finance Corporations Act, 1951 (for short 'the Act'), the petitioner was called upon by the 1st respondent to pay up the dues, in an extent of Rs.1,82,26,304/- with further interest from 1-11-2005 and the other amounts debitable to the account. Along with the said letter, a sale notice proforma was enclosed stating that the respondent Corporation would proceed with the sale of the property in case of further default by the petitioner. Even thereafter, the petitioner continued to pursue with the respondents for reschedulement of the loan, for grant of instalments and pleaded for a one time settlement. There was no response from the respondents. Again on 24-4-2006, the 2nd respondent issued a notice under Section 29 of the

Act calling upon the petitioner to pay up the total outstanding amount of Rs.1,28,64,769/- within ten days. The petitioner did not pay. He avers that he could not. Eventually, the plant and machinery were seized on 6-7-2006 and on 5-9-2006 an advertisement (impugned) was issued for sale of the plant and machinery, in the daily press which was published on 7-9-2006.

The singular contention of the petitioner to resist the proceedings under Section 29 of the Act is that the respondents ought to have taken proceedings under Section 31 of the Act and could not have proceeded under Section 29 of the Act without recourse first to proceedings under Section 31 of the Act. This contention is stated to be rejected. In terms of the provisions of Section 31 of the Act which is clear that these special provisions are available for enforcement of claims by Financial Institutions where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under Section 30 and the industrial concern fails to make such repayment. Expressly the remedies under Section 31 of the Act are without prejudice to the provisions of Section 29 of the Act. Therefore, the mere availability of another remedy under Section 31 of the Act is no bar to the proceedings under Section 29 of the Act. It is so legislatively provided and expressly

In extremis, the learned counsel for the petitioner contends that the respondents are obligated to give a fair opportunity to the petitioner to pay the outstanding loan amount in instalments conceived at his convenience and in conformity with his economic comfort. It is not within the province of this Court, at any rate under Article 226 of the Constitution of India, to novate the contractual terms between the

petitioner and the 1st respondent or to suspend the operation and availability of the lawful remedies available to the respondent-Corporation. Admittedly, the petitioner has defaulted on its reciprocal obligation under the terms of the loan advanced to him by the 1st respondent and on such default, the 1st respondent is entitled by the legislative provisions of Section 29 of the Act to proceed against the petitioner in a manner provided under Section 29 of the Act. No mandamus can issue to interdict the exercise of lawful remedies by the 1st respondent.

On the aforesaid analysis, there are no merits in the writ petition. The writ petition fails and is accordingly dismissed at the stage of admission after hearing the learned counsel for the 1st respondent. There shall be no order as to costs.

GODA RAGHURAM, J.

6th November, 2006.
GRR